

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DAVID TARVER,

Petitioner,

v.

MAGGIE MILLER-STOUT,

Respondent.

Case No. C06-5577 RJB/KLS

REPORT AND
RECOMMENDATION

**NOTED FOR:
December 29, 2006**

This habeas corpus action has been referred to United States Magistrate Judge Karen L. Strombom pursuant to Title 28 U.S.C. §§ 636(b)(1) and Local MJR 3 and MJR 4. Petitioner filed this action under 28 U.S.C. § 2254 challenging the revocation of his sentence under the Special Drug Offender Sentence Alternative (DOSA). (Dkt. # 5). The Court's records reflect this case to be duplicative of issues raised previously by Petitioner in Tarver v. Miller-Stout, Case No. 05-5802FDB. Accordingly this petition is successive and this file should be administratively closed and the case transferred to the Ninth Circuit in accordance with Circuit Rule 22-3(a).

DISCUSSION

Ninth Circuit Rule 22-3 (a) states:

- (a) **Application.** Any petitioner seeking leave to file a second or successive 2254 petition or 2255 motion in district court must seek leave under 28 U.S.C. §§

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2244 or 2255. An original and five copies of the application Must be filed with the Clerk of the Court of Appeals. No filing fee is required. If a second or successive petition or motion, or application for leave to file such a petition or motion, is mistakenly submitted to the district court, **the district court shall refer it to the court of appeals.**

(Emphasis added).

The Petitioner is filing a successive petition challenging the same issues. Petitioner's previous challenge was dismissed. *See, Tarver v. Miller-Stout*, Case No. 5-5802FDB. Clearly, the instant petition should be treated as a "second or successive" petition and should be transferred.

CONCLUSION

Accordingly, the Court should transfer this habeas corpus petition as a second or successive petition and administratively close the file. A proposed order accompanies this Report and Recommendation.

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on **December 29, 2006**, as noted in the caption.

DATED this 30th day of November, 2006.



Karen L. Strombom
United States Magistrate Judge